United Nations CAT/C/BHR/CO/2-3/Add.1

Convention against T e and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
7 June 2018
English
Original: Arabic
Arabic and English only

Committee against Torture
Sixty-fourth session
23 July–10 August 2018
Item 3 of the provisional agenda
Submission of reports by States parties under article 19 of the Convention

Concluding observations on the second and third reports of Bahrain

Addendum

Information received from Bahrain on follow-up to the concluding observations*

[Date received: 11 May 2018]

* The present document is being issued without formal editing.

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Information regarding the second and third periodic reports of the Kingdom of Bahrain

I. Introduction

1. The Committee against Torture considered the second and third periodic reports of Bahrain (CAT/C/BHR/2 and CAT/C/BHR/3) at its 1511th and 1514th meetings, held on Friday, 21 April and Monday, 24 April 2017, and adopted concluding observations in that regard at its 1533rd and 1534th meetings, held on Monday, 8 May and Tuesday, 9 May 2017.

2. In its recommendation No. 42, the Committee requested Bahrain to provide, by 12 May 2018, information on follow-up to the Committee's recommendations on the moratorium on the death penalty, regular visits by independent monitoring bodies, including international bodies, to places of detention, and visits by the United Nations human rights mechanisms, as set forth in paras. 13 (a), 23 (d) and 41 of the concluding observations.

3. The concluding observations adopted in connection with the second and third periodic reports were transmitted to the High Coordinating Committee for Human Rights. The High Coordinating Committee, which was established pursuant to Prime Ministerial Decree No. 50 of 2012 and then reconstituted under the chairmanship of the Minister for Foreign Affairs pursuant to Prime Ministerial Decree No. 31 of 2017, coordinates with governmental authorities on all issues related to human rights, in accordance with each authority's mandate. The remit of the High Coordinating Committee includes the following:

(a) Preparing the reports that Bahrain is required to submit pursuant to the human rights instruments to which it is a party;

(b) Reviewing and approving all national reports prepared by national subsidiary committees in Bahrain on the country's obligations towards the United Nations human rights treaty bodies so that those reports can be submitted to the United Nations by the Ministry of Foreign Affairs;

(c) Studying the extent to which the country's domestic laws are in line with the human rights instruments to which Bahrain is a party;

(d) Elaborating responses to statements and queries on human rights submitted by organizations and associations within the country and abroad;

4. As part of the reform process launched by His Majesty the King, which aims to strengthen and enhance respect for human rights in Bahrain, and in the light of the recommendations made by the Committee against Torture, a summary of the discussions held with the Bahraini delegation regarding the country's second and third reports submitted pursuant to the Convention was published in the national media. Several consultative meetings have also been held with representatives of civil society organizations active in the area of human rights in Bahrain to brief them on the draft reports submitted by Bahrain under the conventions that it has ratified.

5. A plan of action for implementing the recommendations of the Committee against Torture has been drawn up and circulated among governmental authorities in Bahrain.

II. Measures taken with a view to following up on recommendation No. 42 and its associated recommendations

A. Recommendation No. 13 (a): the moratorium on the use of the death penalty

6. According to the Criminal Code, as amended,[1] the death penalty may be applied only in extreme cases, such as the following:

Offences affecting external State security

(a) Undermining the independence of the Kingdom or any of its territories (art. 112);

(b) Participating in an armed insurrection; joining the armed forces of a hostile State at war with the Kingdom; intervening for the benefit of such a State; inciting members of the Bahraini armed forces to join the armed forces of such a State; mobilizing troops or funds for the benefit of such a State; or facilitating the entry of the enemy into Bahraini territory (arts. 113–116);

(c) Wilfully breaching a contract where contracted to provide goods or services to meet the needs of the armed forces, with the intention of weakening the defence of the State or jeopardizing the operations of the armed forces (art. 118);

(d) Communicating with a hostile State in order to assist it in its wartime operations or to conduct hostile manoeuvres against the Kingdom; disclosing or divulging defence secrets (arts. 121, 122 and 126);

(e) Wilfully sabotaging weapons or war supplies during wartime (art. 129);

(f) Committing any of the offences set out in this part of the Criminal Code with the intention of assisting the enemy or hindering Bahraini military operations during wartime (art. 142).

Offences affecting internal State security

(a) Making an attempt on the life or freedom of the King (art. 147);

(b) Using an armed gang to attempt to overthrow the system of government. The death penalty applies only to the individuals responsible for forming or leading the gang and to any person who communicates with the gang (art. 148);

(c) Assuming leadership of a gang with the intention of occupying a public or government building (art. 149);

(d) While acting as a commanding officer of the armed forces or the police, ordering a subordinate to oppose government orders (art. 151);

(e) Forming or leading a gang responsible for conducting a sectarian attack against the public or for using arms to resist arrest by security forces; forming or leading a gang with the intention of expropriating or plundering State-owned land (arts. 152 and 153);

(f) Wilfully causing damage to a public building where such an offence results in the death of a person (art. 155).

Other offences

(a) Providing false reports or testimony where an individual is wrongly executed as a result of that report or testimony (art. 234);

(b) Wilfully conducting an act of arson where such action leads to the death of a person (art. 277);

[1] Decree-law No. 15 of 1976 promulgating the Criminal Code.

(c) Using explosives during the occupation of a public building or during an attempt to overthrow the system of government (art. 279);

(d) Endangering a sea or air vehicle, or a means of public transport, or human lives by exposing them to bacteria or dangerous substances where such action leads to the death of a person (arts. 282–285);

(e) Wilfully committing premeditated murder, either through the use of poisonous or explosive material, or in connection with another offence, or if the victim is a relative of the accused, or if the victim is a public servant killed because of or during the performance of his or her duties (art. 333);

(f) Raping or assaulting another person where such action results in the death of the victim (art. 349);

(g) Kidnapping or restricting the freedom of a person or using force to commit a robbery where such actions result in the death of the victim (arts. 359–376);

(h) Wilfully damaging or violating the property of another person where such action results in the death of a person (art. 414).

Safeguards for offenders, including offenders sentenced to death

7. The Bahraini legal system provides important safeguards for, and upholds the fundamental rights of inmates and convicted persons, including individuals sentenced to death, held in correctional and rehabilitation centres for inmates and remand detainees. The Court of Cassation Act,[2] the Code of Criminal Procedure[3] and the Correctional and Rehabilitation Facility Act and its implementing regulations[4] explicitly uphold the following rights of the convicted person:

(a) The right to humane treatment;

(b) The right to receive all necessary medical care and treatment free of charge from a competent physician;

(c) The right to family visits;

(d) The right to food of adequate nutritional value;

(e) The right to practice personal religious rites and rituals;

(f) The right to communicate with the outside world and to receive visits from and exchange correspondence with relatives, in accordance with regulations;

(g) The right to communicate with a diplomatic or consular official representing the country of which he is a national;

(h) The right to communicate and to meet with the lawyer representing him in the case in which he is a party, and the right to attend such meetings with an interpreter. The meeting shall be held within sight of guards but shall not be audible to them.

(i) The right to examine the regulations for the treatment of inmates and the applicable disciplinary rules;

(j) The right to examine the judgment or decision issued against him by the competent authorities;

(k) The right to exercise on a daily basis;

(l) The right to be informed about defence, appeals and cassation proceedings relating to the judgments issued against him within the legally prescribed time period;

[2] Decree-law No. 8 of 1989 promulgating the Court of Cassation Act.

[3] Decree-law No. 46 of 2002 promulgating the Code of Criminal Procedure.

[4] Act No. 18 of 2014 promulgating the Correctional and Rehabilitation Facility Act; Decree No. 131 of 2015 of the Minister of the Interior promulgating the implementing regulations of the Correctional and Rehabilitation Facility Act.

(m) The right to submit complaints and grievances to the relevant authorities and to file such complaints and grievances using the complaint boxes installed for that purpose;

(n) The right to privacy with his lawful spouse.

Numerous safeguards are accorded to individuals sentenced to death, including the following:

(a) A death sentence may be handed down only where a unanimous decision has been reached by the members of the court, which must be reflected in the ruling (art. 260 of the Code of Criminal Procedure);

(b) In cases not involving the death penalty, if the accused has confessed to the offence, the court may decide to limit itself to the confession and not call witnesses. In cases involving the death penalty, however, the investigation must be completed even if the accused has confessed to the offence in court (art. 220 of the Code of Criminal Procedure);

(c) Death sentences must, by law, be reviewed by the Court of Cassation even if the offender does not appeal against the ruling (arts. 40 and 41 of the Court of Cassation Act). The court that issued the ruling must immediately refer the case to the technical office of the Court of Cassation, which must prepare a legal opinion on that ruling. The Court of Cassation must review every aspect of the ruling to verify its validity and may choose to overturn the ruling and refer the case back to the competent court for reassessment by a different chamber from that which issued the initial ruling, where provided for by law if the Court of Cassation determines that there was an error in the application of the law, the reasoning or the evidence collection processes on which the ruling was based. If the court to which the case was re-referred hands down a death sentence which the Court of Cassation believes should be revoked for any of the aforementioned reasons, then the Court of Cassation shall revoke the sentence, examine the case itself and issue a ruling thereon.

Diminished responsibility, justifications and mitigating circumstances

8. Bahraini law allows judges to choose between the death penalty or deprivation of liberty, or to commute the sentence to a lesser punishment. It should be noted in this connection that:

(a) If the offender unknowingly or unwillingly commits the offence, he or she shall not be held liable, if the offender was mentally impaired or incapable of making decisions freely at the time of the offence as a result of illness, he or she shall be accorded a reduced sentence or sent to a treatment facility; if the offender was mentally impaired at the time of the offence as a result of having consumed narcotic drugs or alcohol unknowingly or under coercion, he or she shall not be held liable (arts. 31 to 35 of the Criminal Code);

(b) The youthful age of an accused person over 15 but under 18 years of age shall be taken as a mitigating circumstance (art. 70 of the Criminal Code);

(c) If a mitigating circumstance is established in a case involving an offence punishable by the death penalty, the penalty shall be reduced to imprisonment or detention for a period of not less than one year and, if the offence is punishable by imprisonment for life or for a fixed term, it shall be reduced to the penalty for a misdemeanour, unless otherwise specified by the Criminal Code (art. 71 of the Criminal Code);

(d) If an offence is committed under extenuating circumstances and the judge feels the need for clemency, the penalty shall be reduced. (art. 72 of the Criminal Code).

Implementation of the death penalty

9. Under Bahraini law, a person sentenced to death is subject to a number of legal safeguards that ensure the humane implementation of that penalty, in accordance with specific terms and conditions and in line with security concerns. These safeguards include the following:

(a) The person condemned to death shall be held in prison under a warrant issued by the Office of the Public Prosecution using the form prescribed by the Minister of Justice until such time as the sentence is carried out (art. 329 of the Code of Criminal Procedure);

(b) The relatives of the person condemned to death may visit him or her on the day appointed for the execution. The meeting shall take place at a site distant from the site of execution (art. 65 of the Correctional and Rehabilitation Facility Act; art. 76 of the implementing regulations of the Correctional and Rehabilitation Facility Act);

(c) The person condemned to death enjoys the right to write a last will and testament. The requisite procedures are taken if he requests to do so;

(d) All necessary steps and measures shall be taken in accordance with the religion of the convicted person (art. 330 of the Code of Criminal Procedure);

(e) If a woman sentenced to death is pregnant, that sentence shall not be carried out until two years after she has given birth (art. 66 of the Correctional and Rehabilitation Facility Act);[5]

(f) A death sentence is carried out only once the ruling is made final and the King has granted his approval (art. 51 of the Criminal Code; art. 328 of the Code of Criminal Procedure);

(g) The death penalty shall be carried out upon the written request of the Public Prosecutor, once the approval of the King has been granted (art. 331 of the Code of Criminal Procedure);

(h) A death penalty shall not be carried out on a public holiday related to the religion of the convicted person (art. 333 of the Code of Criminal Procedure);

(i) The death penalty shall be carried out in the presence of the judge for the enforcement of sentences, a member of the Office of the Public Prosecution, a prison guard, the prison doctor or other doctor delegated by the Office of the Public Prosecution and the prison cleric. No one other than those persons may attend unless with the special permission of the Public Prosecutor. The lawyer of the condemned person shall always be allowed to attend if so requested. At the site of execution and in the hearing of those present, the sentence of death shall be read out, including the charge for which the individual is to be executed. If the condemned person wishes to make a statement, the judge for the enforcement of sentences shall enter it into the record. Once the death penalty has been carried out, the judge for the enforcement of sentences shall note as much in the record including the doctor's certification of death and the time it occurred. (art. 332 of the Code of Criminal Procedure; arts. 68 and 69 of the Correctional and Rehabilitation Facility Act);

(j) The death penalty shall be carried out inside the prison or at some other place not exposed to public view, at the written request of the Public Prosecutor to the director of the prison, in which it is stated that the requirements for the implementation of the death penalty have been fulfilled. (art. 67 of the Correctional and Rehabilitation Facility Act);

(k) If the person sentenced to death is a foreigner, the embassy or consulate shall be notified that the death penalty has been carried out. The body shall be handed over to the embassy or consulate so that steps may be taken to transfer it to the executed person's country if so requested. (art 70 of the Correctional and Rehabilitation Facility Act);

(l) The body of the executed person shall be handed over to his relatives or representative. If he has no relatives or representative or if they refuse to receive the body, the State shall bear all expenses for burying the body. The burial shall take place without ceremony. (art. 335 of the Code of Criminal Procedure; art. 70 of the Correctional and Rehabilitation Facility Act).

[5] Pursuant to article 2 of the Civil Code and statutory language on stays of execution for pregnant women contained in the Correctional and Rehabilitation Facility Act, which was adopted subsequent to the adoption of Code of Criminal Procedure, article 334 of which provides that, if the person sentenced to death is found to be pregnant, that sentence shall be suspended until three months after she has given birth. The Code of Criminal Procedure thus regulated the issue in question in a different manner. The applicable law is therefore the Correctional and Rehabilitation Facility Act, which provides that if a woman sentenced to death is pregnant, that sentence must not be carried out until two years after she has given birth.

Death sentences (2016 to 30 April 2018)	
Number of death sentences handed down:	17
Number of death sentences carried out:	1
Number of death sentences commuted to a lighter penalty by a court of cassation:	2
Number of persons sentenced to death whose sentences were commuted to a lighter penalty following non-approval of the death sentence by His Majesty the King:[6]	4

B. Recommendation No. 23 (d): Allow independent monitoring bodies, including international bodies, to carry out regular unannounced visits to all places of detention and to meet in private with detained persons.

(a) The Correctional and Rehabilitation Facility oversees centres which, while entrusted with upholding law and order by ensuring the implementation of inmates' sentences, also provide for the psychological, physical and intellectual rehabilitation of inmates so that they become productive members of society who can make a contribution to the country's future. To that end, the centres seek to alter inmates' behaviour by reinforcing their positive behaviour and eliminating any negative behavioural patterns, while also seeking to develop their talents, practical skills and untapped potential and encouraging them to use their talents and skills in positive ways. They also offer and oversee the implementation of educational, rehabilitative, sports and health programmes, and take action to ensure that inmates' rights are fully upheld and their human dignity maintained.

(b) In this context, and in the light of the key role played by the centres, the Ministry of the Interior has accorded particular attention to the Correctional and Rehabilitation Facility and has renovated and modernized its buildings and equipment to ensure that rehabilitation programmes employ cutting edge methodologies and comply with the latest international standards.

(c) Under the country's laws, domestic regulatory authorities are empowered to monitor the extent to which the Correctional and Rehabilitation Facility and similar institutions achieve the aforementioned objectives. Furthermore, article 63 of the Correctional and Rehabilitation Facility Act empowers the following to visit and inspect the centres, review their records and receive and hear complaints or grievances from any inmate:

(i) The President of the Court of Cassation;

(ii) The Prosecutor General;

(iii) The President of the High Court of Appeal;

(iv) The President of the High Criminal Court;

(v) The President of the High Civil Court;

(vi) The judge for the enforcement of sentences;

(vii) Public prosecutors, within the areas subject to their jurisdiction.

(d) Article 5 of the National Institution for Human Rights Act provides that the Institution "shall conduct on-site visits in accordance with established procedures governing the monitoring of human rights, to correctional institutions, detention facilities, labour demonstrations, health-care and educational establishments, or any other public place where it is suspected that human rights may be violated". Regular visits are scheduled. The Ministry of the Interior welcomes collaboration with the Institution and is keen to facilitate its work by coordinating regular visits to the aforementioned centres.

[6] Article 41 of the Constitution of Bahrain provides that: "The King may abate or commute a sentence by decree. A total amnesty may be granted only by law, and shall apply to offences perpetrated before the amnesty was proposed."

(e) The Ombudsman may visit prisons, juvenile welfare institutions and remand and detention centres to ascertain the lawfulness of confinement measures and ensure that inmates, prisoners and detainees are not being subjected to torture or inhuman or degrading treatment;

(f) The Prisoners' and Detainees' Rights Commission, established pursuant to Decree No. 61 of 2013, is responsible for monitoring conditions in prisons, detention centres, juvenile welfare centres and all other places, such as hospitals and mental health centres, in which a person may be held in order to ensure that inmates are not subjected to ill-treatment. The Commission is comprised of judges and staff of the Office of the Public Prosecution, as well as representatives of civil society organizations;

(g) The Directorate of Internal Investigations of the Ministry of the Interior, is mandated to receive communications and complaints against members of the civilian and military staff of the Ministry of the Interior based on the legislation of the Kingdom of Bahrain, the policing standards laid down in the Police Code of Conduct, and the general requirement of respect for human rights, the principles of justice and the rule of law.

(h) The following international bodies have carried out announced and unannounced visits to correctional and rehabilitation facilities since 2012:

Body that carried out the visit	*Date*
Office of the United Nations High Commissioner for Human Rights	December 2012
Office of the United Nations High Commissioner for Human Rights	May 2014
European Parliament delegation	20 December 2012
Amnesty International	24 January 2014
Human Rights Watch	February 2013
International Human Rights Council	26 February 2013
International Committee of the Red Cross	23 March 2015
International Committee of the Red Cross	1 and 2 April 2015
International Committee of the Red Cross	14 June 2015
International Committee of the Red Cross	9–13 August 2015
International Committee of the Red Cross	24–27 June 2016
International Committee of the Red Cross	30 October–9 November 2016
International Committee of the Red Cross	9–17 April 2017
International Committee of the Red Cross	7–13 June 2017
International Committee of the Red Cross	24–28 September 2017
International Committee of the Red Cross	4–13 December 2017
International Committee of the Red Cross	7–14 March 2018

(i) Since its establishment, the Prisoners' and Detainees' Rights Commission has exercised its legal mandate to monitor prisons, detention facilities, juvenile and detainee welfare centres and other places where persons may be held, such as hospitals and psychiatric facilities, with a view to ascertaining inmates' detention conditions and treatment and ensuring that they are not subjected to torture or to inhuman or degrading treatment. Between April 2014 and May 2016 the Commission conducted 12 unannounced visits to prisons, pretrial detention facilities and other detention centres, as shown in the following table:

No.	*Location*	*Date of the visit*
1	Dry Dock Pretrial Detention Centre	21–24 April 2014
2	Police Department of the Capital Governorate	24 and 25 December 2014
3	Police Department of the Muharraq Governorate, Al-Hadd Police Station	24 and 25 December 2014
4	Police Department of the Northern Governorate	24 and 25 December 2014
5	Police Department of the Southern Governorate	24 and 25 December 2014
6	General Directorate of Criminal Investigation and Forensic Evidence	24 and 25 December 2014
7	Juvenile Welfare Centre	18–20 January 2015
8	Reform and Rehabilitation Centre for Women Inmates	18–20 January 2015
9	Women's Custody and Pretrial Detention Centre	18–20 January 2015
10	Jau Reform and Rehabilitation Centre	15–22 November 2015
11	Deportation Centre for Foreign Men	24 and 25 May 2016
12	Shelter and Deportation Centre for Foreign Women Detainees	24 and 25 May 2016

(j) Furthermore, the National Institution for Human Rights has carried out the following announced and unannounced visits to correctional and rehabilitation facilities and other detention centres in the last three years:

In 2018:

(i) Jau Reform and Rehabilitation Centre (April)

In 2017:

(i) Issa Women's Reform and Rehabilitation Centre (August)

(ii) Issa Juvenile Welfare Centre (August)

(iii) Deportation Centre for Men (October)

(iv) Deportation Centre for Women (October)

(v) Police Department of the Muharraq Governorate (August)

In 2016:

(i) Dry Dock Pretrial Detention Centre (March)

C. Recommendation No. 41: The Committee recommends that the State party promptly accept the request of the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to visit the country. The State party is encouraged to enable the United Nations High Commissioner for Human Rights to visit the country, particularly its places of detention, which are a matter of relevance to the compliance by Bahrain with the provisions of the Convention.

(a) Bahrain has drawn up medium- and long-term harmonization and development plans that have inter alia, necessitated amendments to the country's Constitution and to certain laws and legislative instruments, including those on combating

torture. Bahrain has also developed its human rights procedures and established several human rights monitoring institutions. All these developments have taken place in tandem with the evolution of Bahraini society;

(b) Given the above, the request of the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment came at an inopportune time, and a later visit will be scheduled to discuss ways of cooperation and to identify the appropriate mechanism in that regard;

(c) Bahrain is studying the possibility of arranging a visit to the country, including to the Correctional and Rehabilitation Facility, of a technical team from the Office of the United Nations High Commissioner for Human Rights on the basis of a technical cooperation and capacity-building framework, in order to learn about the latest developments in those areas and in the area of human rights.

D. Further information

(a) The Criminal Code and alternative measures: With regard to Recommendation No. 19 (d) of the Committee against Torture, namely "Consider replacing pretrial detention for minor crimes with non-custodial measures, in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)", attention is drawn to Act No. 18 of 2017 on alternative penalties and measures, which, by broadening the scope for the imposition of alternative penalties, marks a paradigm shift in that area. Previously, only prison terms of less than 3 months could be commuted to alternative penalties. However, under the new law, alternative penalties can replace prison terms of up to one year (Article 10 of the Criminal Code and Alternative Measures Act), prison terms of between 1 and 5 years or prison terms of up to 5 years in special circumstances (article 11 of the Criminal Code and Alternative Measures Act). Relevant alternative penalties have been established by the Bahraini legislative authorities.

(b) Between 20 July 2017, when Act No.18 of 2017 on alternative penalties and measures was promulgated, and 13 March 2018, a total of three convicted persons had their custodial sentences commuted to alternative penalties. It should be noted that the Code of Criminal Procedure already authorized the judge for the enforcement of sentences to hand down alternative penalties under certain specific conditions, and that, previously, a total of 260 custodial sentences had been commuted. However, under the new law, judges have wider scope to prescribe non-custodial sentences. It also makes it possible for the judge and the Office of the Public Prosecution to replace pretrial detention with alternative measures. Such measures can reduce prison overcrowding. Alternative penalties include monitoring individuals or restricting their movements with a view to preventing disturbances that can result in the commission of offences, obliging them to compensate the victims of their crimes or other injured parties, thereby undoing the harm caused by an offence, and compelling them to undertake work of benefit to society. There is no doubt that the adoption of the new law is a positive development for accused persons as well as for their families, especially if they are the family breadwinners, in that custodial sentences could negatively affect their families' standard of living and stability.

(c) The Criminal Code and Alternative Measures Act complements the reform programme launched by His Majesty the King by facilitating the rehabilitation and education of convicted persons and promoting their reintegration into society as productive and upright individuals. All Bahraini authorities are required to promote compliance with the Act by facilitating community participation.

(d) We also note that the judicial authorities have accorded particular attention to training and capacity-building programmes. In that connection, the Ministry of Justice, in collaboration with the Institute for Judicial and Legal Studies, organized training programmes on international human rights standards and how they should be applied and strengthened. The programmes, whose key themes included legal safeguards for defendants, the application of international conventions and treaties on human rights, and the definition of international humanitarian law, aimed to enhance the skills of all members of the judiciary and promote the use of best practices. Numerous agreements and memorandums

of understanding have, moreover, been signed with prestigious international institutions to facilitate the provision of technical assistance and legal, judicial and police training to all individuals working in the field of law enforcement, including judges, prosecutors, police officers, military judges, security service personnel and members of other relevant authorities with a view to fostering a culture of respect for human rights that reflects the unwavering royal desire to establish a country based on the rule of law. (Further details regarding the training courses are attached).

(e) Bahrain's fourth report will provide details regarding implementation of all other recommendations contained in the concluding observations.